

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re KELVIN CANNON,
on Habeas Corpus.

A121142

(Del Norte County
Super. Ct. No. HCPB-06-5176)

In re ROBERT LUCA,
on Habeas Corpus.

A121143

(Del Norte County
Super. Ct. No. HCPB-05-5276)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on November 25, 2008, be modified as follows:

1. Footnote 1 on page 5 is brought into the text as a new paragraph following the full paragraph on page 5 that starts, “Rather than denying the petitions”

2. On page 5, the second sentence of the full paragraph is deleted, and the following sentence and new footnote 1 are substituted in its place:

We are unaware of any California decision holding that prisoners have a right enforceable on writ of habeas corpus to require a prison to comply with its internal regulations, so long as the claimed violation of the regulations does not implicate constitutionally protected interests.^[1]

^[1] In a petition for rehearing, petitioners point out that compliance with prison regulations was the subject of habeas corpus petitions in *In re Scott* (2003) 113 Cal.App.4th 38, *In re Carter* (1988) 199 Cal.App.3d 271, and *In re Reina* (1985) 171 Cal.App.3d 638. While none of those decisions

expressly considered the right supporting habeas corpus relief, each of them involved either disciplinary or sentence credit regulations. The United States Supreme Court has suggested that prisoners may have a due process right to judicial review of actions that affect their liberty interests, such as discipline or sentence time. (*Superintendent v. Hall* (1985) 472 U.S. 445, 453–455.) Each of the decisions could be justified on the basis of such a due process right. A fourth case cited by petitioners in their rehearing petition, *In re French* (1980) 106 Cal.App.3d 74, argued that a prison regulation violated a state statute. (*Id.* at p. 79.) As noted in the text, statutory violation is a recognized basis for habeas corpus relief.

There is no change in the judgment.

Respondents' petition for rehearing is denied.

Dated:

Margulies, Acting P.J.

A121142, A141143

In re Cannon and Luca, on Habeas Corpus